

By: Klick

H.B. No. 3564

A BILL TO BE ENTITLED

AN ACT

relating to the office of the state long-term care ombudsman;
amending provisions subject to a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 101A, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission [~~"Elderly resident" means a resident of a long-term care facility who is 60 years of age or older~~].

(1-a) "Local ombudsman entity" means a local entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of the state.

(2) "Long-term care facility" means a facility that [~~serves persons who are 60 years of age or older and that~~] is licensed or regulated or that is required to be licensed or regulated by the commission [~~department~~] under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman, consisting of the state long-term care ombudsman and representatives who are employed by the commission.

(3-a) "Ombudsman program" means the program through

1 which the functions and duties of the office are carried out,
2 consisting of the office and all representatives.

3 (4) "Representative" means an employee or volunteer
4 specifically designated by the office as a representative of the
5 office.

6 (4-a) "Resident" means a resident of a long-term care
7 facility.

8 (5) "State long-term care ombudsman" means the chief
9 administrator of the office.

10 Sec. 101A.252. OPERATION OF OFFICE. (a) The office
11 [~~department~~] shall operate in accordance with federal and state
12 statute [~~the office of the state long-term care ombudsman~~].

13 (b) The commission [~~department~~] may operate the office
14 directly or by contract or memorandum of agreement with a public
15 agency or other appropriate private nonprofit organization. The
16 commission, agency, or organization may not adopt a policy that
17 interferes with the role, powers, and duties of the office. The
18 commission [~~department~~] may not use an agency or organization that
19 [~~is~~]:

20 (1) is responsible for licensing or certifying
21 long-term care services; [~~or~~]

22 (2) is an association of long-term care facilities or
23 of any other residential facility that serves persons with
24 disabilities or who are 60 years of age or older, or that is an
25 affiliate of such an association; or

26 (3) has an ownership, operational, or investment
27 interest in a long-term care facility.

1 (c) The commission [~~department~~] shall consider the views of
2 residents [~~elderly persons~~], provider organizations, advocacy
3 groups, and area agencies on aging in planning and operating the
4 office.

5 (d) The commission [~~department~~] shall ensure that a person
6 involved in designating the state long-term care ombudsman or in
7 designating a [~~an employee or~~] representative [~~of the office~~] does
8 not have a conflict of interest.

9 Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman
10 program shall operate in cooperation with any regulatory agency
11 funded and mandated by federal [~~the Older Americans Act of 1965 (42~~
12 ~~U.S.C. Section 3001 et seq.)~~] and state statute.

13 Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE
14 OMBUDSMAN AND OFFICE. (a) The [~~state ombudsman and the~~] office has
15 [~~have~~] the powers and duties authorized and required by state and
16 federal law.

17 (b) The office may use appropriate administrative, legal,
18 and other remedies to assist [~~elderly~~] residents as provided by
19 commission [~~department~~] rules.

20 (c) The office acts independently of the commission in the
21 performance of its powers and duties under this subchapter.

22 (d) The state long-term care ombudsman has the authority to
23 designate, suspend, or remove a local ombudsman entity or
24 representative.

25 Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit
26 volunteers and citizen organizations to participate in the
27 ombudsman program. A paid staff member of an area agency on aging

1 network or a nonprofit social service agency may be an ombudsman.

2 An ombudsman is a representative [~~of the office~~].

3 (b) The office shall provide training to ombudsmen as
4 required by this subchapter and federal law.

5 (c) The office shall coordinate ombudsman services with the
6 protection and advocacy systems that exist for persons with
7 developmental disabilities or mental illness.

8 (d) The office shall coordinate ombudsman services with
9 state and local law enforcement agencies and courts of competent
10 jurisdiction.

11 Sec. 101A.256. LEGAL COUNSEL [~~ASSISTANCE~~]. The commission
12 [~~department~~] shall ensure that the office receives adequate legal
13 advice and representation without conflict of interest as defined
14 by the Texas Disciplinary Rules of Professional Conduct. The
15 attorney general shall represent the state long-term care ombudsman
16 and [~~or~~] a representative if a suit or other legal action is brought
17 or threatened to be brought against that person in connection with
18 the person's performance of the official duties of the ombudsman
19 program [~~office~~].

20 Sec. 101A.257. INVESTIGATIONS. (a) The office shall have
21 access to [~~elderly~~] residents and shall investigate and resolve
22 complaints made by or on behalf of [~~elderly~~] residents.

23 (b) The state long-term care ombudsman [~~department~~] shall
24 ensure that each ombudsman designated under Section 101A.255 who
25 investigates complaints has received proper training and has been
26 approved by the office as qualified to investigate complaints.

27 (c) The office shall investigate a grievance made against a

1 representative.

2 (d) A long-term care facility shall cooperate with an
3 investigation conducted by the state long-term care ombudsman or a
4 representative, including an ombudsman designated under Section
5 101A.255.

6 Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a)
7 The state long-term care ombudsman or representative [~~the state~~
8 ~~ombudsman's designee, specifically identified by the~~
9 ~~commissioner,~~] shall have access to patient care records of
10 [~~elderly~~] residents as provided by commission rules [~~of long-term~~
11 ~~care facilities as provided by Subsection (a-1). The executive~~
12 ~~commissioner by rule shall establish procedures for obtaining~~
13 ~~access to the records]. All records and information created or
14 obtained by [~~to which~~] the state long-term care ombudsman or a
15 representative [~~the state ombudsman's designee obtains access]~~
16 remain confidential.~~

17 (a-1) The state long-term care ombudsman or representative
18 [~~the state ombudsman's designee, specifically identified by the~~
19 ~~commissioner,~~] shall have access to patient care records of a
20 resident [~~elderly residents of long-term care facilities]~~ if:

21 (1) the resident or the resident's legal
22 representative consents to the access;

23 (2) the resident is unable to consent to the access and
24 the resident has no legal representative; or

25 (3) access to the records is necessary to investigate
26 a complaint and:

27 (A) a legal representative [~~guardian~~] of the

1 resident refuses to consent to the access;

2 (B) the state long-term care ombudsman or
3 representative [~~the state ombudsman's designee~~] has reasonable
4 cause to believe that the legal representative of the resident
5 [~~guardian~~] is not acting in the best interests of the resident; and

6 (C) the state long-term care ombudsman approves
7 the access.

8 (b) The office shall ensure that the identity of a
9 complainant or any [~~facility~~] resident may be disclosed only with
10 the [~~written~~] consent of the person or the person's legal
11 representative or on court order.

12 (b-1) Files, records, and other information maintained as
13 part of the ombudsman program may be disclosed only at the
14 discretion of the state long-term care ombudsman.

15 [~~(c) The information in files maintained by the office may~~
16 ~~be disclosed only by the ombudsman who has authority over the~~
17 ~~disposition of the files.~~]

18 Sec. 101A.259. REPORTING SYSTEM. The office shall maintain
19 a statewide ombudsman uniform reporting system to collect and
20 analyze information relating to complaints and conditions in
21 long-term care facilities as long as such system does not duplicate
22 other state reporting systems. The office shall provide the
23 information to the executive commissioner, subject to Section
24 101A.258 [~~department and the Health and Human Services Commission~~].

25 Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall
26 analyze and monitor the development and implementation of federal,
27 state, and local laws, rules, regulations, and policies relating to

1 long-term care facilities and services and shall recommend any
2 changes the office considers necessary.

3 (b) Section 556.006(a), Government Code, does not apply to
4 the state long-term care ombudsman or a representative.

5 Sec. 101A.261. PUBLIC INFORMATION. The office shall
6 provide information and make recommendations to public agencies,
7 legislators, and other persons about [~~others that relates to~~] the
8 problems and concerns of [~~elderly~~] residents.

9 Sec. 101A.262. [~~ANNUAL~~] REPORT. (a) The office shall
10 prepare a [~~an annual~~] report that contains:

11 (1) information and findings relating to the problems
12 and concerns [~~complaints~~] of [~~elderly~~] residents; and

13 (2) policy, regulatory, and legislative
14 recommendations to solve the problems, resolve the concerns
15 [~~complaints~~], and improve the quality of the [~~elderly~~] residents'
16 care and lives.

17 (b) The report must be submitted to the governor and the
18 presiding officer of each house of the legislature not later than
19 November 1 of each even-numbered year.

20 Sec. 101A.263. LIMITATION OF LIABILITY. The state
21 long-term care [~~An~~] ombudsman or a representative is not liable for
22 civil damages or subject to criminal prosecution for performing
23 official duties unless the state long-term care ombudsman or
24 representative acts in bad faith or with a malicious purpose.

25 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
26 offense if the person:

27 (1) by act or omission, wilfully [~~intentionally~~]

1 interferes or attempts to interfere with the state long-term care
2 ~~[an]~~ ombudsman or a representative attempting to perform official
3 duties; or

4 (2) commits or attempts to commit an act of
5 retaliation or reprisal against any resident or employee of a
6 long-term care facility for filing a complaint or providing
7 information to the state long-term care ~~[an]~~ ombudsman or a
8 representative.

9 (b) An offense under this section is a Class B misdemeanor.

10 (c) The commission ~~[department]~~ shall ensure ~~[assure]~~ that
11 criminal sanctions will be initiated only after all administrative
12 procedures are exhausted.

13 SECTION 2. Section [101A.264](#), Human Resources Code, as
14 amended by this Act, applies only to an offense committed on or
15 after the effective date of this Act. An offense committed before
16 the effective date of this Act is governed by the law in effect on
17 the date the offense was committed, and the former law is continued
18 in effect for that purpose. For purposes of this section, an
19 offense was committed before the effective date of this Act if any
20 element of the offense occurred before that date.

21 SECTION 3. This Act takes effect September 1, 2017.